IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WA.No. 3588 of 2001(D)

AGAINST THE JUDGEMENT/ORDER IN OP.5833/2000 Dated 14/12/2000
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APPELLANTS:RESPONDENTS IN O.P
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1. UNION OF INDIA REPRESENTED BY SECRETARY
MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI
2. PAY AND ACCOUNT OFFICER, CENTRAL PENSION
ACCOUNTING OFFICE, MINISTRYOF FINANCE, GOVERNMENT
OF INDIA, TRIKKOOT COMPLEX,BHIKAJI,NEW DELHI 110066
3. THE DIRECTOR GENERAL, BORDER SECURITY FORCE,
DIRECTORATE GENERAL, BSF H. QUARTERS,
BLOCK NO 10, C.G.O. COMPLEX, NEW DELHI 3

BY ADV. SRI.P.PARAMESWARAN NAIR,
ASST. SOLICITOR GENERAL

RESPONDENT:PETITIONER IN OP

K.T. VIJAYAN S/O K. DINESHAN, KARTHIKA,
THENGAMKARA P.O. MALLASSERY,
PATHANAMTHITTA KERALA

BY ADV. SRI.P.J.JOSEPH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 25/07/2007, THE COURT ON 31/07/2007
DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No 3588 of 2001

Dated: 31st July 2007

JUDGMENT

Radhakrishnan, J.

This writ appeal is preferred by the Union of India and others aggrieved by the judgment in O.P. No 5833 of 2000. Original petition was disposed of by the learned single judge placing reliance on the decision of the apex court in Raghu Nandanlal Choudhary and others v. Union of India (AIR 1988 S.C 2125). Learned single judge disposed of the writ petition quashing Ext.P5 and directing the respondents to compute the pension payable to the petitioner and pass orders within two months from the date of receipt of a copy of the judgment. The decision of the apex court in Raghu Nandanlal Chaudhary's case, supra (AIR 1988 S.C. 2125) has been subsequently clarified by the apex court in Union of India and another v. Satish Kumar (2006) 1 S.C.C. 360) wherein the apex court held that the principles laid down in Raghu Nandanlal's case must be confined to the facts of that case and it may not be used to give

benefit to all and sundry. Further it was held that so long as it is an admitted position that Rule 49 governs, payment of pension, could only be as per the Rules and when there is no challenge to the Rule and there is no ground of discrimination taken, the Rule cannot be bypassed. In such circumstances, we are inclined to allow this appeal and set aside the judgment of the learned single judge. We make it clear that the issue raised is covered by the principle laid down by the apex court in Satish Kumar's case. The appeal is allowed.

C.M.P.No 8365 of 2001 would stand dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

31/07/2007
en/

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